FROM THE OFFICE OF THE JUSTICE MINISTER

Department of Justice
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FROM: **FIONA SCULLION**
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DATE: **10 NOVEMBER 2026**

TO: **KATHY O'HANLON**
CLERK TO THE COMMITTEE FOR JUSTICE

Summary: **Statutory Rules in relation to the Police Act 1997 (Criminal Records) (Amendment) Regulations (Northern Ireland) 2027 and Rehabilitation of Offenders (Exceptions) Order (NI) 2027.**

Business area: **AccessNI.**

Issue: **SL1 - Amends to the Police Act 1997 (Criminal Records Regulations (Northern Ireland) 2008 and Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.**

Restrictions: **None.**

Action Required: **For consideration.**

Officials Attending: N/A. Written briefing only.

BACKGROUND

Schedule 2 of the Safeguarding Vulnerable Groups (NI) Order 2007 sets the definitions of **Regulated Activity** which, for roles working with children, includes:-

(i) Teaching, training, instructing, caring for or supervising children, or providing advice/ guidance on well-being, or driving a vehicle only for children; and

(ii) Work for a limited range of establishments ('specified places') with opportunity for contact with children: eg schools, children's homes, childcare premises, a children's hospital.

The SVGO definitions of Regulated Activity further require a 'frequency test' to be met when working with children. These activities must be undertaken frequently or on four or more days in a 30-day period or overnight. Where the frequency test is met, roles are eligible for an AccessNI Enhanced check, including a check of the Barred Lists.

If the frequency test is not met, role holders would only be eligible for a Basic check ie disclosure of unspent convictions only. This has been the position in NI since the current definitions of Regulated Activity were introduced through the Protection of Freedoms Act in 2012.

The Department has learned of a legislative difference in the eligibility for Enhanced checks in NI and England & Wales. In England & Wales, the Criminal Records Regulations make additional provision for **eligibility for Enhanced checks (without Barred Lists) where work is undertaken infrequently with children** which, if done frequently, would meet the definition of Regulated Activity. An example would be a member of a church congregation who is placed on a rota to assist with the crèche once a fortnight.

The Department understands that Home Office introduced the above provision in 2013 to address safeguarding concerns arising from the number of people who were removed from the scope of Regulated Activity when the current definitions were introduced in 2012. This additional provision is not present in the NI equivalent Regulations.

Whilst officials believe numbers falling into this category to be small (as most organisations will ensure the frequency test is being met for such roles and thereby eligible AccessNI Enhanced check), it is considered appropriate to legislate to close this safeguarding gap and ensure parity with the approach being taken in E&W.

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BARRED LIST CHECKS FOR ACCESSNI STAFF

The second aspect of this SL1 relates to checks on AccessNI staff. All new staff, on joining AccessNI, are required to undertake an Enhanced check. This is considered necessary to ensure that adequate protections are in place to safeguard the processes, information and integrity of the work undertaken in the Branch. This Enhanced check extends to a check of the Barred Lists.

However, on reviewing the Criminal Record Disclosure Regulations the Department was noted that, whilst there is eligibility for an Enhanced check for AccessNI staff, this eligibility does not extend to checking the Barred Lists. It is considered appropriate, for the reasons set out above, that new staff joining AccessNI should be checked against the Barred Lists and the draft Statutory Rule includes a provision to correct legislative oversight.

To provide for these legislative changes, amendments are required to the following two Statutory Rules:

- The Police Act (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008; and
- Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

The Statutory Rules are subject to negative resolution and will come into effect on 8th February 2027. The relevant draft Statutory Rules are attached.

PURPOSE OF THE STATUTORY RULES

The Statutory Rules are being introduced to address potential safeguarding gaps and maintain legislative parity with changes to equivalent legislation already enacted in England and Wales. The Statutory Rules create provision for:-

a) Eligibility for Enhanced checks under **The Police Act (Criminal Records)(Disclosure) Regulations (Northern Ireland) 2008** for:-

i. those undertaking work which, if done frequently, would be Regulated Activity relating to children within the meaning Part I of Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

ii. Extension of Barred Lists checks to include staff working in AccessNI.

b) A new exclusion under the **Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979** in respect of those undertaking work which, if done frequently, would be Regulated Activity relating to children within the meaning Part I of Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

REASON FOR LEGISLATIVE CHANGE

Section 113B(2)(b) of the Police Act 1997 requires that 2 conditions must be met for a role to be eligible for an Enhanced check, namely:

a) The role must be a prescribed purpose (within The Police Act (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008); and

b) The role must be subject to an exempted question, i.e. it must be included within the exclusions set out in Article 2 of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 – this will allow for disclosure of the full criminal record, subject to filtering rules.

CONSULTATION

The proposed SRs will make narrow amendments to facilitate change to address potential safeguarding gaps and are required in order to mirror similar legislative changes already in place in England and Wales.

The Department does not consider that a public consultation is required in these circumstances.

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EQUALITY IMPACT

There is no specific impact on any of the specified groups in the equality legislation as the changes apply equally to applications from all groups.

REGULATORY IMPACT

The Department concluded that there are no impacts arising on the wider business community as a result of these legislative changes.

FINANCIAL IMPLICATIONS

No additional costs to the Department are expected as a result of these changes. Disclosure fees may be liable to be paid for Enhanced AccessNI checks; volunteer checks are provided free of charge.

EU IMPLICATIONS

There are no EU implications.

SECTION 24 OF THE NORTHERN IRELAND ACT 1998

This legislation is not incompatible with rights under the European Convention, incompatible with European Community Law and does not discriminate on the grounds of religious belief or political opinion.

OPERATIONAL DATE

The rule will come into effect from 8th February 2027.

I would be grateful if you would bring this matter to the attention of the Justice Committee.

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cc. Human Rights Commission
& Legislative Programme Secretariat

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